

REMARKS

In the Final Office Action mailed 11 December 2008, the Examiner rejected claims 14, 15, 17, 18, 20-26, 30, and 36-37 for obviousness-type double patenting; and rejected claims 14, 15, 17, 18, 20-26, 30, and 36-37 under 35 U.S.C. 102(e).

Applicants submitted on January 16th a terminal disclaimer to overcome the double patenting, which was accepted, and submitted a new priority claim to remove the 102(e) reference, which the Examiner declined to enter. The priority claim is hereby resubmitted as an amendment to the specification.

Applicants cancelled non-elected claims 31-35 as requested by Examiner. The list of claims pending in the Advisory Action mailed February 9, 2009, indicates that the cancellation of claims has been entered.

Applicants amended Claim 25 per Examiner's request, and that amendment is hereby resubmitted.

Claims 14, 15, 17, 18, 20-26, 30, and 36-37 remain pending in this application.

Rejection Under Doctrine of Obviousness-Type Double Patenting

Applicants' Terminal Disclaimer in compliance with 37 C.F.R. 1.321(b), to overcome the rejection based on obviousness-type double patenting, was accepted in the Advisory Action of February 9 and the double patenting rejection was withdrawn.

Rejection Under 35 U.S.C. § 102(e) of Claims 14, 15, 17, 18, 20-26, 30, and 36-37

The Examiner rejects **claims 14, 15, 17, 18, 20-26, 30, and 36-37** under 35 U.S.C. § 102(e) as anticipated by Meltzer (U.S. Patent No. 6125391 A, filed 10/16/1998).

Amendment to the specification, claiming priority to Meltzer, effectively removes the reference from consideration as prior art. The Applicants' time period for making a claim of priority is open-ended and not limited by the American Inventors Protection Act of 1999 (see MPEP § 201.11(V)) because this application was filed before November 29, 2000. Therefore, Applicants respectfully submit that the amendment should be entered and the application is then in condition for allowance.

We again thank Examiner Hutton for discussing this issue with us on February 25 and agreeing that the new claim of priority to Meltzer removes Meltzer as a reference. See, accompanying Interview Summary.

In light of the amendment to the specification, Applicants hereby withdraw their previous remarks regarding the Meltzer reference and caution the public that those remarks should not be relied on for interpretation of the patent claims, as the Examiner did not rely on them in advancing the case towards allowance.

Next Office Action

This case has been the subject of numerous office actions. If the Examiner is inclined to issue another rejection, we would appreciate a courtesy call in advance, so that we can resolve any grounds of rejection without need for either the Examiner of Applicants to file additional papers. Applicants believe that a three-way interview might put the case in condition for allowance and request that Examiners Hutton and Nguyen schedule a three-way interview, if the supplemental search turns up art that the Examiner did not previously apply.

We remind the Examiners that this is a 5-year application with more than two office actions, which is supposed to receive the SPE's personal attention during continuing prosecution. MPEP § 702.02 ("supervisory patent examiners are expected to personally check" and "carefully stud[y]" 5-year applications).

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims as now stated.

If the Examiners are willing to conduct an interview as a way of bringing this case to a conclusion, the undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Fee Authorization. The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-0869 (OIN 1012-1).

Respectfully submitted,

Dated: February 25, 2009

/Ernest J. Beffel, Jr./

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